

STATE WATER RESOURCES CONTROL BOARD MEETING
SACRAMENTO, CALIFORNIA

In the Matter of the Petition
of the Citizens Committee to
Save Our Public Lands and
Request for Stay of Resolution
No. 77-10, of the California
Regional Water Quality Control
Board, North Coast Region. Our
File No. A-183.

Order No. WQ 77-31

BY THE BOARD:

On August 26, 1976, the California Regional Water Quality Control Board, North Coast Region (Regional Board), adopted Order No. 76-174, providing waste discharge requirements for the Louisiana Pacific Corporation (discharger) for logging and associated activities to be conducted at Hoxie Crossing adjacent to the Middle Fork of the Eel River in Trinity County. On April 21, 1977, the State Water Resources Control Board (State Board) adopted Order No. WQ 77-9 which remanded Order No. 76-174 to the Regional Board for reconsideration and for inclusion of requirements to protect the North Fork of the Eel River.

On May 26, 1977, the Regional Board adopted Order No. 77-86, which amended the Regional Board's earlier waste discharge requirements (Order No. 76-174), pursuant to State Board Order No. WQ 77-9. The amendments to the requirements included in Order No. 77-86 clarify that the requirements do in fact apply to the North Fork of the Eel River and also provide that prior to actual operation on this project, the discharger must submit a technical report for Regional Board approval. They further provide that the part of the technical report

dealing with construction of an access road across Bureau of Land Management (BLM) land may be submitted separately from the rest of the technical report. A technical report dealing with road construction was submitted by the discharger and on August 4, 1977, the Regional Board adopted Resolution No. 77-10 approving the technical report and authorizing certain road construction activities in the project area.

On September 6, 1977, the Citizens Committee to Save Our Public Lands (petitioner) filed a petition for review of Resolution No. 77-10. On September 19, 1977, the petitioner filed a Request for a Stay Order which was affirmed by the petitioner on September 26, 1977. On October 20, 1977, the State Board adopted Order No. WQ 77-27 denying the Request for a Stay Order.

BACKGROUND

The discharger has a renewable option to harvest timber on land owned by Richard Wilson and plans to harvest between three to four hundred acres of timber adjacent to the Middle Fork of the Eel River. The Timber Harvest Plan (THP 1-76-62T) was approved by the Division of Forestry on February 10, 1976, despite the nonconcurrence of the representatives of the California Department of Fish and Game and the Regional Board.

The following findings contained in Order No. 76-174 characterize the physical setting and identify salient environmental considerations of this controversial project:

- d. water contact recreation
- e. non-contact water recreation
- f. cold freshwater habitat
- g. wildlife habitat
- h. preservation of rare and endangered species
- i. fish migration
- j. fish spawning

"14. Of particular importance is a unique summer steelhead population of the Middle Fork Eel River which presently accounts for approximately two-thirds of the State of California's extraordinary resource.

"15. The beneficial uses of Henthorne Lakes include:

- a. water contact recreation
- b. non-contact water recreation
- c. cold freshwater habitat
- d. wildlife habitat

"16. This operation is within an extensive de facto wilderness area and within one-half mile of the Yolla Bolla-Middle Fork Eel River Wilderness Area. Castle Peaks, a roadless area, is one-quarter mile south of this operation."

A Right-of-Way Grant (CA 3051) for construction of an access road was issued by the Bureau of Land Management (BLM), subsequent to adoption of Regional Board Order No. 76-174. This Grant provides that construction activities shall be discontinued on October 15th of each year. Comments received on this petition indicate that this road construction is now complete.

It should be specifically noted that the Regional Board approval of the discharger's technical report in Resolution No. 77-10 relates only to road construction by the discharger on the BLM right-of-way. According to the terms of Orders No. 76-174 and 77-86, technical reports regarding all other waste producing activities relating to this

project must receive separate Regional Board approval prior to any discharge of waste from these other activities. Such separate approval for other waste producing activities has not yet been granted by the Regional Board. Although it might be concluded that the issue of the appropriateness of Resolution No. 77-10 is moot since the road construction covered by the Resolution has been completed, we will nevertheless consider this petition in order to provide guidance in future similar situations.

CONTENTIONS

In summary, the petitioner made the following contentions:

(1) that the Regional Board failed to consider the beneficial uses of the waters of the North Fork of the Eel River basin in adopting Regional Board Order No. 77-86 and Resolution No. 77-10;

(2) that the Regional Board failed to adopt waste discharge requirements designed to protect the beneficial uses of the North Fork of the Eel River;

(3) that there is no reasonable assurance that the proposed road construction activity of the discharger will comply with waste discharge requirements;

(4) that the Regional Board failed to consider feasible alternatives or mitigation measures for the project in violation of the California Environmental Quality Act (CEQA);

(5) that the Regional Board failed to follow CEQA requirements for regulatory programs certified for exemption from the EIR

provisions of CEQA pursuant to Public Resources Code Section 21080.5 (i.e., programs which have been approved by the Secretary of the Resources Agency as including an alternative environmental process which meets criteria specified in Section 21080.5) and

(6) that the Regional Board action violates the State Board Statement of Policy With Respect to Maintaining High Quality of Waters in California (Non-Degradation Policy).

FINDINGS

Regional Board Order No. 76-174 as amended by Order No. 77-86 contains discharge specifications and prohibitions governing discharges to both the North and Middle Forks of the Eel River. For example, no discharge is permitted which would cause the turbidity of either fork or tributaries thereto to be increased more than 20 percent above naturally-occurring background levels.^{1/}

1. Discharge Specification A.1., Orders Nos. 76-174 and 77-86.

In Order No. 77-86, the Regional Board also found, in substance, that in order to reasonably assure compliance with the terms of that Order and Order No. 76-174, the discharger would be required to submit a technical report^{2/} to the Board for approval prior to commencement of waste discharge on the subject property.

On July 19, 1977, the discharger submitted its technical report, entitled "Preliminary Soils/Geologic Investigations" prepared by consulting engineers and geologists, to the Regional Board staff. This technical report which was required by prohibition B.4. of Order No. 77-86 was considered by the Regional Board, after reasonable

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2. "B.4. The discharger shall not discharge any waste from the subject property until a complete technical report is submitted to and approved by the Regional Board at a public hearing and any necessary changes to these waste discharge requirements are adopted. The technical report shall be prepared by a licensed engineering geologist and shall contain a topographical map of the areas covered by these requirements, drawn to a scale of 1" = 400' with a contour interval of 20', and shall delineate mudflow areas, headscarp areas, and other geologically-sensitive areas which may result in surficial erosion or landsliding when disturbed by road construction or logging activities. The technical report shall also contain plot maps drawn to a scale of 1" = 50' with a contour interval of 10' which prescribe specific engineering design and mitigation measures for the railroad car stream crossings, the spring area above Henthorne Lakes, and any additional geologically-sensitive areas found by the consulting geologist while investigating the logging plan area. However, the part of this technical report regarding the road construction through Bureau of Land Management-managed land may be submitted and approved separately from the rest of the technical report."

public notice^{3/}, on August 4, 1977, and serves as the basis for Resolution No. 77-10.

Considerable testimony at the August 4, 1977 hearing was received by the Regional Board regarding the adequacy of the technical report. The Regional Board staff concluded the following:

1. The technical report and maps, which cover only the road alignment on Bureau of Land Management lands, adequately delineate the areas of geological sensitivity along the right of way. To this extent, the report partially fulfills the requirement of Prohibition B.4. of Order No. 77-86.
2. The report provides general recommendations for methods of mitigating erosion and sediment transport at the various hazardous features along the right of way such as seeps, over-steepened slopes, landslides, drainageways, etc.
3. The report does not, as required by Prohibition B.4., "...prescribe specific engineering design and mitigation measures for...geologically sensitive areas found by the consulting geologist...."

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3. Petitioner contends that Resolution No. 77-10 was adopted without "advance notice to the public". We find this contention without merit. On July 20, 1977, Notice of Public Hearing was circulated to all interested persons specifying that on August 4, 1977, the Regional Board will "consider a technical report submitted by the Louisiana-Pacific Corporation in compliance with...Order No. 77-86...." Petitioner was present at the August 4, 1977 hearing, presented evidence and made legal argument. Resolution No. 77-10 was adopted as a result of said "consideration".

Thus, while the technical report substantially complied with Prohibition B.4., certain details were not provided. As a result of this detail not being provided, the Regional Board in Resolution No. 77-10 approved the technical report subject to the following conditions:

1. Plot maps (1" = 50' scale) and engineering design for mitigating facilities shall be prepared for all "significant" drainageway crossings, seep areas, cut and fill sections, and potential spoil areas as specifically identified in the attached map designated Attachment A. Prior to actual road construction in these identified "significant" areas, said plot maps and engineering design shall be submitted to the Executive Officer for review and approval. Said construction shall not commence until submittal and approval are complete. Additional geologically-sensitive areas exposed during road construction activities may be added to Attachment A by the Executive Officer.
2. All future road construction along the Bureau of Land Management right-of-way shall be supervised on the ground by a certified engineering geologist.

3. The engineering geologist shall certify that each "significant" area has been constructed in the manner specified by the engineering designs in "1" above.

Contentions Nos. 1, 2 and 6, listed above, relate primarily to the appropriateness and propriety of the particular numerical criteria and prohibitions contained in the subject discharge requirements and not to the action of the Regional Board in adopting Resolution No. 77-10 allowing the discharger to proceed prior to the filing of a complete geologist's report. To the extent that the challenge of contentions 1, 2 and 6 is to the original adoption of requirements and not to the Board's action in subsequently adopting Resolution No. 77-10, the contentions are not timely (See Water Code Section 13320) and will not be addressed further in this Order.

All of petitioner's other contentions, as listed under the heading "Contentions" above, appear to focus on the decision of the Regional Board as reflected in Resolution No. 77-10 to modify its previous requirement that the Board itself review and approve the discharger's completed technical report and proposed mitigation measures by delegating to its Executive Officer the responsibility to review and approve mitigation measures. Therefore, we will not go into detail in resolving each of the petitioner's individual contentions but rather will focus on the issue of the appropriateness and propriety of such a delegation in

general.

In accordance with Water Code Section 13223, a Regional Board has the authority to delegate any of its powers and duties, with certain specified exceptions, to its Executive Officer. "Issuance, modification, or revocation of any...waste discharge requirement" is one of the exceptions. The petitioner argues that the conditions of Resolution No. 77-10 constitute an unlawful delegation to the Executive Officer of authority to issue waste discharge requirements. We disagree. Orders Nos. 76-174 and 77-86 prescribe the requirements and Resolution No. 77-10 merely approves the technical report, in part, and provides for further technical submittals. The conditions contained in Resolution No. 77-10 set specific standards to guide the Executive Officer in making the factual-engineering staff judgment regarding when the project may proceed. This is substantially different from the setting of numerical standards and criteria which we believe is contemplated by the words, "issuance of waste discharge requirement" in Water Code Section 13223.

Under these circumstances we find the action of the Regional Board in adopting Order No. 77-10 was appropriate and proper. In fact, the Regional Board has gone further than we would normally require regarding this road construction to insure that the provisions of its requirements are met by requiring a technical report, by reviewing the first submittal of that report and by requiring that no construction on the road in question occur until its Executive Officer had approved specific mitigation measures.

Nevertheless, there are circumstances under which a Regional Board should go further at the time of the adoption of requirements than the mere setting of numerical criteria.

While we emphasize that it is the exception rather than the rule, the circumstances relating to the remainder of this project will require Regional Board review of the actual mitigation measures proposed by the discharger. As stated in the findings contained in the Regional Board's Order No. 77-86 and set forth at page 3 of this Order, the area involved in the remainder of the project is geologically very sensitive, having steep, unstable slopes and high rainfall. In addition, the waters that will be affected if the project is improperly executed are extremely valuable. For example, the portion of the Middle Fork of the Eel River which is adjacent to the proposed logging operation was designated as a part of the State's Wild and Scenic Rivers system and the Middle Fork also is the site of a unique summer steelhead run, presently accounting for two thirds of the State's summer steelhead population.

We cannot set down a rule to be applied in every case regarding when technical reports should be required or when mitigation measures should be considered by the Board itself. The responsibility of a Regional Board to take action beyond the simple adoption of numerical criteria and prohibitions varies with the degree of assurance the Board has that those specifications will, in fact, be met and with the harm that may occur if they are not.

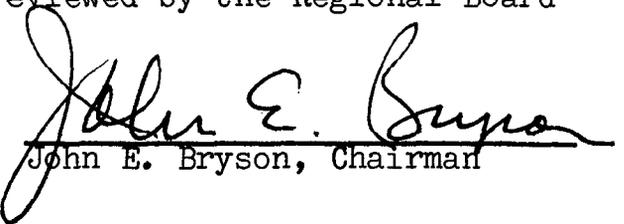
We do not here find that the Regional Board must itself supervise every aspect of the day-to-day implementation of these requirements as they relate to the Middle Fork drainage. It appears reasonable to permit the Executive Officer to approve mitigation measures for "sensitive areas" discovered during the carrying out of the operation as was apparently contemplated by Resolution No. 77-10.

In closing, we note that the Regional Board staff submitted to the State Board in connection with the review of the subject petition comments regarding events which have taken place since the adoption of Resolution No. 77-10. These comments show that the portions of the project which have been completed to date have been carefully engineered and monitored by the Corporation's consulting engineering geologist, by representatives of BLM and by the Regional Board Executive Officer and his staff. We are not critical of the way in which the Regional Board staff has carried out its responsibilities under Resolution No. 77-10 to date. We simply find that the Regional Board itself should further involve itself in the reviewing of proposed mitigation measures in the future regarding the remainder of this project as specified in paragraph B.4. of its Order No. 77-86.

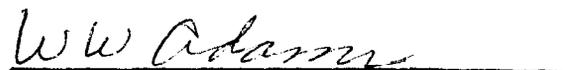
ORDER

NOW, THEREFORE, IT IS ORDERED that the action of the North Coast Regional Water Quality Control Board was appropriate and proper and that any further geologist's reports and mitigation measures submitted by the discharger should be reviewed by the Regional Board itself.

Dated: DEC 15 1977


John E. Bryson, Chairman


W. Don Maughan, Vice-Chairman


W. W. Adams, Member

- "8. Louisiana-Pacific Corporation, in order to gain access ... is in the process of obtaining a road right-of-way across land under the stewardship of the U.S. Department of Interior, Bureau of Land Management (BLM). This right-of-way request is BLM application no. CA 3051. For the purposes of these Waste Discharge Requirements, all logging activities conducted pursuant to THP 1-76-62T, including those associated with road construction, operation and maintenance of access across land under BLM stewardship (CA 3051), are to be covered by this Order.
- "11. The proposed logging operation is adjacent to the Middle Fork Eel River in a mixed conifer forest of Douglas fir, White fir, Ponderosa pine, and Sugar pine along with smaller stands of hardwoods. A significant portion of the area proposed for logging or road construction is on steep slopes underlain by thin, highly erosive soils, with numerous active and dormant slumps, slides, and other types of earth movement. Average 24 hours rainfall in a storm with a recurrence interval of 25 years is approximately 9.0 inches. The large scale harvesting of commercial timber and construction of roads in the unstable areas severely threaten to remove the cohesive force of tree roots and to destabilize the already unstable slopes. If the logging operation activates or accelerates further movement of the unstable slopes, then increased siltation of the Middle Fork Eel River and the Henthorne Lakes would be expected to occur, deleteriously affecting the beneficial uses of Henthorne Lakes and the Middle Fork Eel River.
- "12. The Middle Fork Eel River, which is adjacent to this logging operation, was designated for protection in 1972 in SB 107, the Wild and Scenic Rivers Act. This Act requires that the designated rivers and their immediate environment are to be preserved in their free-flowing state for the benefit and enjoyment of the people of the State of California (Section 5093.30).
- "13. The beneficial uses of the Middle Fork Eel River and its tributaries are:
- a. agricultural supply
 - b. industrial service supply
 - c. groundwater recharge